

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SANDRA L. SCOTT, SURVIVING LEGAL  
SPOUSE OF GARY R. SCOTT, DECEASED,  
AND JON WAYNE SCOTT AND THOMAS  
RICHARD SCOTT, MINOR DEPENDENT  
CHILDREN OF GARY R. SCOTT,  
DECEASED**

Claimant

VS.

**WOLF CREEK NUCLEAR  
OPERATING CORPORATION**

Respondent  
Self-Insured

Docket No. 201,929

**ORDER**

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Alvin E. Witwer on April 16, 1996.

**ISSUES**

The issue on appeal is whether the Administrative Law Judge exceeded his jurisdiction by denying claimant's request for payment of medical benefits finding claimant failed to make a timely written claim as required by K.S.A. 44-520a.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On April 16, 1996 the Administrative Law Judge denied claimant's request that respondent be ordered to pay certain medical expenses incurred by the decedent Gary R. Scott. The decision was made from a preliminary hearing held pursuant to K.S.A. 44-534a, as amended on a stipulated set of facts. Based on the stipulated facts, the Administrative Law Judge concluded claimant failed to make a timely written claim. After reviewing the record and considering the arguments by the parties, the Appeals Board concludes the decision by the Administrative Law Judge shall be affirmed. In so finding, the Appeals Board notes it's decision relates to a medical expense which is not a claim by the minor dependents who would have no obligation to pay that expense and for whom the timeliness of written claim calls into play other provisions of the Act found in K.S.A. 44-509.

The surviving spouse and minor dependents of decedent Gary R. Scott seek benefits under the Kansas Workers Compensation Act for the death of Gary R. Scott which occurred July 13, 1992. For purposes of the preliminary hearing the parties have stipulated to the essential facts. These stipulations include a stipulation that Mr. Scott suffered a heart attack on July 13, 1992 that was not brought on by unusual exertion at work. The stipulation states the heart attack is not the claimed accidental injury. Instead, the claimed accidental injury occurred from medical care provided by a physician's assistant employed by respondent.

Sandra L. Scott filed a civil negligence action in Woodson County District Court on April 13, 1994 alleging that Mr. Scott's death was a result of negligence of the physician's assistant employed by respondent Wolf Creek. In the civil action Wolf Creek asserted that Sandra Scott's exclusive remedy was pursuant to the Workers Compensation Act. The district court agreed and granted summary judgment in favor of Wolf Creek. The decision by the district court is now pending on appeal with the Kansas Court of Appeals.

Written claim for workers compensation benefits was not served on respondent until May 31, 1995. The Administrative Law Judge found that the written claim was not made timely. The Appeals Board agrees. K.S.A. 44-520a requires a written workers compensation claim to be filed "within two hundred (200) days after the last date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident."

The record reflects that no written claim was made within one year. K.S.A. 44-520a(b) governs the circumstances presented here. Where recovery is denied in a civil action on grounds that the Workers Compensation Act provides the exclusive remedy, the time limits for filing written claim do not control so long as the civil action was filed within 200 days from the date of accident or death complained of. In this case the civil action was not filed within 200 days. By negative inference, the time limits provided in K.S.A. 44-520a control and act to bar the claim.

Claimant argues that the principles of res judicata and estoppel should prevent respondent from denying workers compensation benefits. Claimant argues, for example, the fact that the district court found the death to be governed by the Workers Compensation Act should be given res judicata effect here. As a result, according to claimant, respondent cannot rely on timing or written claim as a defense. Claimant also argues that respondent should be estopped from denying benefits because of the position taken in its defense in the civil action.

The Appeals Board does not agree with either contention. The district court was asked to determine which was the appropriate remedy. The district court did not decide whether claimant gave timely written notice, only that the claim would be governed by the provisions of the Workers Compensation Act. Giving res judicata effect to the district court decision would not prevent respondent from defending the claim on the basis of time limits for making written claim.

The doctrine of the estoppel would not apply. Nothing in the record indicates that respondent admitted or asserted in the district court proceedings or otherwise that claimant made timely written claim. Again, respondent's argument was that the claim was governed by and remedy was under the provisions of the Workers Compensation Act.

Finally, claimant contends that respondent should be estopped because, according to claimant's testimony, respondent's representatives advised her that the claim would not be compensable under the Workers Compensation Act. The denial of the claim does not act to estop the employer from asserting and relying upon the defense of timely written claim. As respondent points out, most litigated claims begin with the decision to deny benefits. Respondent's representatives advised the claimant that they did not consider the injury to be compensable. Nothing in the record suggests respondent's representatives were not acting in good faith. Nothing indicates they were fraudulently misleading claimant. Under these circumstances communicating their conclusion to claimant does not estop respondent from asserting a defense based on timeliness of the written claim.

For the above and foregoing reasons the Appeals Board agrees with the decision of the Administrative Law Judge and concludes that decision should be affirmed as it relates to application for medical benefits made by Sandra L. Scott, decedent's spouse.

**WHEREFORE**, the Appeals Board finds that the Order by Administrative Law Judge Alvin E. Witwer dated April 16, 1996 should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

c: Randall L. Fisher, Wichita, KS  
Kim R. Martens, Wichita, KS  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director